Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Part 15 and other Parts of the Commission's Rules.	)	ET Docket 01-278
	)	

ORDER

Adopted: August 27, 2002 **Released: August 28, 2002**

By the Commission: Commissioner Martin approving in part, dissenting in part, and issuing a separate statement.

I. INTRODUCTION

1. By this action, we are granting a thirty day limited waiver, until October 27, 2002, of the marketing deadline for radar detectors that do not comply with the new emission limits for such devices that were adopted in this proceeding. We are denying a request for waiver filed by RadioShack Corporation ("RadioShack") to permit such radar detectors to be marketed for six months beyond the deadline.[1] We are also denying a motion for stay filed by RADAR Members ("RADAR") requesting that we stay the effective date of the new rules adopted in this proceeding.[2] Those rules require that radar detectors be certified as complying with emission limits to protect very small aperture satellite terminals (VSATs) in the 11.7-12.2 GHz band from interference before they may be marketed.

II. BACKGROUND

2. Most radio receivers contain one or more oscillators that generate radio frequency signals that are intended to be used internally within the device in tuning a received signal. These generated signals can radiate from the receiver and can interfere with other nearby receivers. For this reason, Part 15 of the Commission's rules requires certain receivers to meet radiated emission limits to minimize the possibility of interference.[3] The rules previously did not require receivers that tune above 960 MHz, such as radar detectors, to comply with these limits because at the time the limits were established, most widely used receivers tuned only below 960 MHz. However, the record in this proceeding demonstrates that some radar detectors produce radiated emissions in the VSAT downlink frequency band at levels sufficient to cause harmful interference to VSAT reception. Therefore, on July 12, 2002, the Commission adopted a *First Report and Order* in this proceeding that requires radar detectors to comply with the Part 15 emission limits for unintentional radiators with regard to emissions in the 11.7-12.2 GHz VSAT downlink

[1] *See* Petition for Waiver on Behalf of Radio Shack dated August 13, 2002.

[2] *See* Motion for Stay and Petition for Partial Reconsideration filed by the Radio Association Defending Airwave Rights, Inc. (RADAR) on July 26, 2002. The following member of RADAR submitted the motion for stay and petition for reconsideration: BG Tech America, Inc.; Bel-Tronics; Cobra Electronics Corp.; Escort, Inc.; SK Global America, Inc.; and The Whistler Group. The petition for reconsideration makes the exact same arguments as the motion for stay.

[3] *See* 47 C.F.R. § 15.101(a).

band.[4] In the *First Report and Order,* the Commission also provided that effective August 28, 2002, all radar detectors manufactured within or imported into the United States must be certified to demonstrate that they meet the limits.[5] It further provided that effective September 27, 2002, all radar detectors marketed must be in compliance with the new rules.[6]

3. In its motion for stay, RADAR asks that the manufacturing/importation deadline be changed to December 31, 2002, and that no marketing cut-off be set or, alternatively, that the marketing cut-off be changed to July 1, 2003. RADAR claims that a stay of the rules is justified for the following reasons. First, RADAR argues that it is likely to prevail on the merits because the implementation schedule is not practical, is more stringent than the Commission has ever imposed on a consumer product, and was not based on a factual record concerning manufacturing or marketing deadlines.[7] RADAR claims that the implementation schedule for the new rules is not feasible because it will take several more months for all models manufactured to comply with the new rules.[8] It states that the distribution pipeline takes 2-4 months to empty for large outlets, and up to a year or more for small ones.[9] Second, RADAR argues that the implementation schedule will likely result in massive returns from retailers and distributors that will not want to sort compliant from non-compliant equipment, will shut down some manufacturers and harm the industry as a whole.[10] Third, RADAR argues that a slower implementation schedule will reduce the number of non-complying units in service and thus reduce harm to VSATs.[11] RADAR bases this claim on its belief that most radar detector sales are upgrades that replace older units; and if distribution and retail is disrupted as RADAR claims it will be, users will not be able to purchase compliant replacement devices. Finally, RADAR claims that a stay would serve the public interest by reducing VSAT interference overall and preventing economic harm to radar manufacturers, distributors and retailers.[12]

4. The Satellite Industry Association, Spacenet, Inc. and Microspace Communications Corporation ("SIA/Spacenet/Microspace") filed a joint opposition to the RADAR petitions.[13] SIA/Spacenet/Microspace believes that RADAR is unlikely to succeed on the merits of its petition for reconsideration because it raises arguments concerning the implementation schedule that it could have raised during the comment period in this proceeding, and because the Commission's schedule for

[4] *See First Report and Order* at ¶ 13.

[5] The manufacturing and importation deadline is 30 days after publication of the rules in the Federal Register, and the marketing deadline is 60 days after publication of the rules in the Federal Register. *See First Report and Order* at ¶ 15. The rules were published in the Federal Register on July 29, 2002, so the manufacturing and importation deadline is August 28, 2002, and the marketing deadline is September 27, 2002. *See* 67 FR 48989 (2002).

[6] *Id.*

[7] *See* RADAR motion for stay at 5.

[8] *See* RADAR motion for stay at 3.

[9] *Id.*

[10] *See* RADAR motion for stay at 6.

[11] *See* RADAR motion for stay at 6.

[12] *See* RADAR motion for stay at 7.

[13] *See* Joint Opposition of Satellite Industry Association, Spacenet, Inc. and Microspace Communications Corporation to Motion for Stay filed August 1, 2002.

compliance is justified by the unprecedented nature of radar detector interference in the 11.7-12.2 GHz band.[14] SIA/Spacenet/Microspace states that RADAR has not shown that it will suffer irreparable injury from the rules in the *First Report and Order*.[15] It states that there may be some inconvenience and monetary costs associated with compliance, which would not rise to the level of irreparable harm.[16] SIA/Spacenet/Microspace claims that RADAR has not demonstrated a lack of harm to satellite operators if a stay is granted because the longer non-complying units are allowed to flood the market, the greater the incidents of interference will be, and the greater the harmful impact on the satellite user community will be.[17] It claims that dismissal of RADAR's motion for stay would serve the public interest because prompt implementation of the Commission's decision would prevent the market from being flooded with non-compliant devices that can cause interference to licensed services.[18]

5. In its waiver request, RadioShack requests that the Commission permit radar detectors that do not comply with the new rules to be marketed until March 30, 2003. RadioShack provides four reasons in support of this request. First, it states that the Commission's timeframe for compliance with its order inadvertently, but unduly, subjects RadioShack to significant economic and logistical burdens.[19] It states that an average lead time of six months is required from ordering a product to stocking the shelves, making it impossible to sell remove or stop the distribution of inventory and restock with compliant units in the established timeframe.[20] RadioShack states that it will face significant economic losses because it has over 100,000 units worth several million dollars that it would not be able to sell, and that there will be another several million dollars in lost sales because it will not have compliant units available for sale during the fourth quarter of this year.[21] RadioShack states that as a large, private-label retailer, it will be disproportionately burdened by the Commission's order because it will be unable to purchase compliant radar detectors from other manufacturers, and because it is difficult for a retailer with 7,200 stores and over 100,000 units to comply within a short timeframe.[22] Second, RadioShack states that its radar detectors emit less harmful signals than most of the products considered by the Commission in it proceeding.[23] It claims that the measured levels from its products ranged from 28 to 37 dB over the limit, while the radar detectors measured by the Commission ranged from 35 to more than 50 dB over the limit.[24] Third, RadioShack states that the timeframe for compliance set forth by the Commission's order is unprecedented under Part 15.[25] It cites previous proceedings involving Citizen's Band (CB) radio

[14] *See* SIA/Microspace opposition at 4-8.

[15] *See* SIA/Microspace opposition at 8-10.

[16] *See* SIA/Microspace opposition at 9.

[17] *See* SIA/Microspace opposition at 10-11.

[18] *See* SIA/Microspace opposition at 11-12.

[19] *See* RadioShack waiver request at 4.

[20] *See* RadioShack waiver request at 5.

[21] *See* RadioShack waiver request at 7-8.

[22] *See* RadioShack waiver request at 9-10.

[23] *See* RadioShack waiver request at 11.

[24] *See* RadioShack waiver request at 12.

[25] *See* RadioShack waiver request at 13.

receivers, personal computers and scanning receivers in which the Commission provided a longer timeframe to bring equipment into compliance with new or modified rules.[26] Fourth, RadioShack claims that the requested waiver would be in the public interest because it would avoid significant harm to the operations of a major retailer.[27] It claims that the intent of the rule would not be frustrated by a waiver because the quantity of new products into the market would be fixed, and their effect on the satellite industry would be practically nonexistent.[28]

III. DISCUSSION

A. Motion for Stay

6. In determining whether to grant a stay of a decision, there are four factors that must be considered. These are: 1) whether the petitioner has made a strong showing that is likely to prevail on the merits of its appeal; 2) whether the petitioner has shown it will be irreparably injured without relief; 3) whether the issuance of a stay would not cause substantial harm to other parties interested in the proceeding; and 4) whether the stay is in the public interest.[29] The petitioner must make an affirmative showing with respect to all four of these factors to justify a stay of a decision. Upon examination of RADAR's motion, we find that it has failed to make the required showings to justify a stay.

7. RADAR has failed to make a strong showing that it is likely to prevail on the merits of its request for reconsideration. It does not challenge the technical decisions made in the *First Report and Order*, which require radar detectors to meet emission limits to prevent interference to VSATs and to be certified before they can be marketed. The only decision it appeals concerns the implementation schedule. RADAR states that it is likely to prevail on its appeal because the implementation schedule adopted by the Commission is more stringent than the Commission has ever imposed on a consumer product and is not feasible.[30] It cites previous proceedings in which the Commission adopted new or modified technical requirements for Citizen's Band (CB) Radio receivers, personal computers, and scanning receivers.[31]

8. We disagree that RADAR is likely to prevail on its request for reconsideration merely because the Commission adopted a shorter compliance schedule for radar detectors than it did for other types of devices in the previous cases identified by RADAR. None of the cases cited involved interference to an authorized service of the magnitude found in this proceeding. For example, prior to adopting limits for CB radio receivers in 1976, the Commission measured the emission levels from 91 CB receivers that were not subject to limits. The tests showed that all but three units produced radiated emissions of less than 120 μV/m at 3 meters, which is significantly lower than the level permitted at the time for most other receivers.[32] This contrasts sharply with our tests on radar detectors that showed emissions ranging from

[26] *See* RadioShack waiver request at 14.

[27] *See* RadioShack waiver request at 16.

[28] *See* RadioShack waiver request at 17.

[29] Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

[30] *See* RADAR motion for stay at 5.

[31] *See* RADAR petition for reconsideration at 3-4.

[32] Other types of receivers had to meet a limit of 320 μV/m at 3 meters in the frequency range of 25-70 MHz. The Commission ultimately adopted stricter emission limits for CB receivers. *See* 62 F.C.C. 2d 623, 625, 626, 628 (1976).

33,000 μV/m to 231,000 μV/m at 3 meters in the VSAT downlink band.[33] These are hundreds of times higher than the levels we permit for other unintentional radiators, and are higher levels than we permit for some unlicensed transmitters.[34] When the Commission adopted emission limits for personal computers in 1979, it stated that it was taking that action because there had been some reported cases of interference from computers.[35] The emission limits were adopted as a proactive measure to minimize future interference rather than in response to a serious interference situation. The Commission originally intended for manufacturers to comply with the limits within six months, but extended the deadline to a year because measurement procedures for computers had not yet been adopted, and because there was a shortage of qualified laboratories and personnel to test all the computers that had to be approved.[36] This contrasts with the current situation where a measurement procedure for testing radar detectors already exists, and there are multiple Telecommunication Certification Bodies (TCBs) prepared to test and approve them.[37] The cases cited by RADAR concerning scanning receivers are significantly different from this proceeding because there were no complaints of interference caused by scanning receivers. Rather, the Commission required scanning receivers to block cellular telephone reception at the direction of Congress.[38]

9. RADAR has also failed to show that its requested stay would not cause substantial harm to other parties interested in the proceeding. In the *First Report and Order*, we made a finding that some radar detectors on the market produce radiated emissions in the 11.7-12.2 GHz band at levels sufficient to cause harmful interference to VSAT reception. The record in this proceeding demonstrates the severity of interference caused by radar detectors to VSAT reception. Such interference can disrupt uses such as automatic teller machine (ATM) operation and credit card transaction processing, thus causing monetary losses to businesses. The degraded reliability of the VSAT service can harm operators' businesses by causing customers to seek alternative communication services. Therefore, we required that all radar detectors be certified to demonstrate compliance with the Part 15 emission limits in this band before they are marketed to prevent interference to VSATs.

10. The record indicates that over 73% of the radar detectors currently being manufactured comply with the emission limits and are eligible for certification.[39] We took steps to ensure that these radar detectors that already comply with the limits could be quickly certified so they could continue to be marketed without interruption.[40] RADAR requests that we extend the marketing deadline for radar

[33] *See* memorandum of test results by the Commission's Laboratory dated June 25, 2002.

[34] The limit for other unintentional radiators is 500 μV/m at 3 meters. *See* 47 C.F.R. § 15.109. Unlicensed transmitters in the 2.400-2.4835 and 5.725-5.875 GHz bands under the provisions of 47 C.F.R. § 15.249 are limited to 50,000 μV/m at 3 meters.

[35] *See* 79 F.C.C. 2d 28.

[36] *See* 79 F.C.C. 2d 67.

[37] *See* 47 C.F.R. § 15.31(a)(6).

[38] *See* 47 U.S.C. § 302(d). *See* also *Report and Order* in ET Docket No. 93-1, 8 FCC Rcd. 2911 (1993) and *Report and Order* in ET Docket No. 98-76, 14 FCC Rcd. 5390 (1999).

[39] *See* RADAR petition for reconsideration at 4. RADAR states that as of June 10, 2002, 73% of radar detectors being shipped comply with the emission limits, and that 100% will comply by the end of the year.

[40] We permitted Telecommunications Certification Bodies (TCBs) to certify radar detectors so manufacturers would have more than one approval body to choose from, thus permitting certification to be obtained in an expeditious manner. *See First Report and Order* at ¶ 16. In addition, we permitted the labeling and warning (continued….)

detectors so its members can sell approximately 100,000 non-compliant units.[41] In addition, Radio Shack requests that we permit it to sell over 100,000 non-compliant units.[42] We expect that there are other parties besides Radio Shack and RADAR members that also have non-compliant units. Therefore, we conservatively estimate that there are 200,000 to 300,000 non-compliant radar detectors that would be sold if the marketing cutoff date were stayed to the extent requested by RADAR and RadioShack. We conclude that permitting such a large number of non-compliant radar detectors to be marketed and therefore operated indefinitely would cause substantial additional harm to VSAT operators.

11. We are not persuaded by RADAR's argument that its slower implementation schedule would reduce the number of non-compliant units in service and therefore reduce harm to VSAT operators. RADAR claims that retailers will not sort through their inventory after the 60 day marketing cutoff date and return units that do not comply. Rather, it believes that retailers will simply return their entire inventory of radar detectors to the manufacturer to determine which units comply, which will disrupt retail sales and prevent users from purchasing compliant replacement devices.[43] We find that RADAR's claim that retailers will return all units to the manufacturer is speculative and unsubstantiated by any information in the record. RADAR states that no retailers are willing to make a statement on the record that they will return all radar detectors to the manufacturer after the marketing cutoff date.[44] However, the International Mass Retail Association (IMRA) makes a contrary claim to RADAR, stating that the idea of having retailers remove just the non-compliant radar detectors from shelves seems reasonable.[45] In view of the fact that product recalls are all too commonplace today, we believe that retailers are well schooled in discerning acceptable and unacceptable product lots. Further, we are not persuaded that allowing an additional 200,000 to 300,000 non-compliant radar detectors to be marketed will speed the replacement of non-compliant units in service with compliant units. We are also not persuaded by RADAR's claim that because all non-compliant units operate up to only 11.9 GHz, interference to VSATs is not likely to occur. Such radar detectors can cause interference in 200 MHz, or 40%, of the 500 MHz wide VSAT downlink band, thus adversely affecting service providers that use transponders in the lower portion of the band.

12. RADAR further has failed to show that it would be irreparably injured without relief. RADAR states that it is not possible for all radar detectors manufactured and imported to comply with the new rules within 30 days after publication in the Federal Register.[46] It states that a manufacturing and importation cutoff before the end of 2002 will cause extended delays in shipment and severe financial harm to manufacturers, and that product returns by retailers after the marketing cutoff date will almost certainly shut down some manufacturers and possibly the industry as a whole.[47] However, RADAR

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statements that normally must appear on the device to be placed on the individual equipment carton for a period of 180 days so manufacturers would not have to modify compliant devices that were manufactured before the certification requirement became effective. *See First Report and Order* at ¶ 17.

[41] *See* RADAR *ex parte* submission dated August 12, 2002 at 1.

[42] *See* Radio Shack petition for waiver dated August 13, 2002.

[43] *See* RADAR petition for reconsideration at 8.

[44] *See* RADAR *ex parte* submission dated August 12, 2002 at 3.

[45] *See* IMRA *ex parte submission* dated August 22, 2002.

[46] *See* RADAR petition for reconsideration at 4-7.

[47] *See* RADAR petition for reconsideration at 5-8.

provides absolutely no data to support these claims. As noted above, it also states that as of June 10, 2002, 73% of radar detectors being shipped comply with the emission limits, and that 100% will comply by the end of the year. Thus, the majority of radar detectors will already be in compliance with the new rules by the manufacturing and importation cutoff date. As we stated above, RADAR's claim that retailers will return all radar detectors to the manufacturer after the marketing cutoff date, and that this action will shut down manufacturers, is speculative and unsubstantiated by any information in the record. We recognize that there is a cost involved in complying with the new rules, but RADAR has not demonstrated that this cost is an irreparable harm.

13. Finally, we disagree with RADAR that a stay would be in the public interest. Radar detectors that do not comply with the new rules will interfere with VSAT reception. This interference can result in a loss of revenue to service providers and to businesses that rely on VSATs for communications. Furthermore, interference can create a general disruption in service to the public at large who wish to use an ATM machine or complete a credit card transaction at a retail outlet. The interference now being caused by radar detectors is a direct result of changes in radar detector designs in which manufacturers retuned the receiver oscillators to sweep across the VSAT downlink band. Manufacturers have known about the interference complaints for well over a year and thus have had adequate time to redesign their equipment, or because radar detectors previously operated with oscillator frequencies below the VSAT band, return to their earlier compliant designs.

B. Limited Waiver

14. It is a well-established principle that the Commission will waive its rules in specific cases only if it determines, after careful consideration of all pertinent factors, that such a grant would serve the public interest without undermining the policy which the rule in question is intended to serve. *See WAIT Radio v. FCC*, 418 F.2d 1153, (D.C. Cir. 1969). The court in *WAIT Radio* emphasized that the agency's discretion in applying general rules is intimately linked to the existence of "a safety valve procedure" to permit consideration of an application for exemption based on special circumstances. *Id.* at 1157. Indeed, the court considered a rule most likely to be undercut if an agency does not take into account "consideration of hardship, equity, or more effective implementation of overall policy…" *Id*. at 1159.

15. Several parties have expressed concern about complying with the September 27, 2002 cutoff for marketing radar detectors that do not comply with the new emission limits. The International Mass Retail Association (IMRA) believes that it is reasonable to expect retailers to remove non-compliant units from store shelves, but is concerned about the amount of time it will take for employees to sort through radar detector stocks to separate the compliant and non-compliant units.[48] RadioShack has asked that the marketing deadline be waived so that it could sell the majority of the non-compliant devices in its inventory.

16. The requirement that all radar detectors marketed after a specific date must comply with emission limits in the VSAT band is intended to prevent the serious interference to VSATs demonstrated in the record in this proceeding. We find that a short extension of the marketing cutoff adopted in this proceeding would allow for more effective implementation of this policy by providing retailers some additional time to identify and remove non-compliant radar detectors from their inventory. Accordingly, on our own motion, we are granting a limited waiver of the marketing cutoff date in Section 15.37(k) of the rules for a period of thirty days, until October 27, 2002. Retailers are encouraged to remove non-compliant radar detectors from their inventory as quickly as possible.

[48] *See* IMRA *ex parte* submission dated August 22, 2002.

17. We decline to waive the marketing deadline to the extent requested by RadioShack since such a delay would allow numerous non-compliant radar detectors to be sold and undermine the policy that the rule in question is intended to serve. The requirement that all radar detectors marketed after a specific date must meet emission limits in the VSAT band is intended to prevent the serious interference to VSATs demonstrated in the record in this proceeding. Allowing more than 100,000 additional non-compliant radar detectors to be marketed, and therefore operated indefinitely, after the cutoff date undermines the rule's purpose to prevent harmful interference to an authorized service. We are not persuaded by RadioShack's arguments that their radar detectors are less harmful because they emit lower signals than other units tested by the Commission or that the impact on the satellite industry from marketing their units would be non-existent. The levels measured by RadioShack are 25 to 71 times greater than the emission limit we found is necessary to prevent harmful interference to VSATs. RadioShack has failed to show there would be no impact on the satellite industry from marketing over 100,000 additional radar detectors with these emission levels.

18. We also find that a grant of RadioShack's requested waiver would not be in the public interest. We recognize that compliance with the new rules will involve a financial cost to RadioShack. However, as we noted above, radar detectors that do not comply with the new rules will interfere with VSAT reception, resulting in a financial costs to service providers and to businesses that rely on VSATs for communications.

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r), a limited waiver IS GRANTED to permit the marketing of radar detectors that do not comply with the requirements adopted in this proceeding to continue until October 27, 2002.

20. IT IS FURTHER ORDERED that pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r), the motion for stay filed by RADAR Members IS DENIED.

21. IT IS FURTHER ORDERED that pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r), the petition for waiver filed by RadioShack Corporation IS GRANTED IN PART AND DENIED IN PART, consistent with the terms of this order.

22. For further information regarding this Order, contact Mr. Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418-7506, e-mail hvantuyl@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

SEPARATE STATEMENT OF COMMISSIONER KEVIN J . MARTIN, APPROVING IN PART AND DISSENTING IN PART

Re: *Review of Part 15 and other Parts of the Commission's Rules*, Order, ET Docket No. 01-278

I dissent in part from this Order because I fear we are insufficiently taking into account the impact of our aggressive implementation schedule for radar detector compliance, which will result in substantial economic losses for Radio Shack Corporation. I agree with the majority's decision not to modify the August 28, 2002 deadline for manufacturing or importing radar detectors that do not comply with the emission limits we adopted in this proceeding as well as its decision to extend the retail deadline until October 27, 2002. I disagree, however, with the majority's resolution of Radio Shack Corporation's request for waiver.

Radio Shack halted the importation and manufacture of noncompliant radar detectors immediately when the Commission adopted the new emission limits. Nevertheless, Radio Shack currently has an inventory of approximately 85,000 noncompliant radar detectors already located in its U.S. stores and distribution centers. It has made clear that it will sell the bulk of this current inventory regardless when the retail deadline occurs. *See* Letter from Joe D. Edge on behalf of Radio Shack Corporation at 2 (filed Aug. 26, 2002) ("[W]ithout an extension of the marketing deadline or with only a minimal deadline extension, the 85,000 radar detectors now in inventory must be liquidated through 'fire sales.'"). The only question is whether Radio Shack must sell these products through fire sales at greatly reduced prices in order to meet an imminent deadline or whether it can sell them in a more orderly fashion over a longer period of time. In either case, the number of noncompliant products in the marketplace – and therefore the impact on satellite services – will be the same. However, the fire sale approach will cause Radio Shack significant economic harm and extreme logistical burdens. Radio Shack estimates the loss to be in excess of several million dollars from cut-rate prices on inventory and many millions more in lost sales.

Because there is little benefit to forcing Radio Shack to meet an October 27, 2002 retail deadline while there are substantial costs, I would have given it more time to sell its products. At the very least, I would have given Radio Shack a reasonable amount of time to sell the 60,000 units that are on its stores' shelves. Accordingly, I dissent from the majority's decision on Radio Shack's waiver petition.